



DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 68

[Docket ID: DOD-2019-OS-0076]

RIN 0790-AJ95

Voluntary Education Programs

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: To ensure equity of student counseling options available to educational institutions, the DoD is amending its Voluntary Education Programs regulation to cite current law and to remove the requirement that an educational institution must have a DoD installation student population of at least 20 military students before it qualifies to be authorized access on a DoD installation that is not overseas.

DATES: This rule is effective on [INSERT 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Gary Schaub, 703-614-6414.

SUPPLEMENTARY INFORMATION:

Discussion of Public Comments Received

On April 15, 2020, the Department of Defense published a proposed rule titled “Voluntary Education Programs” (85 FR 20893-20895) for a 30-day public comment period. Thirteen public comments were received. Ten comments were within the scope of the rule and were supportive, one comment was a duplicate within this subset, and two comments were outside the scope of this rule.

Ten comments within the scope of the rule articulated the respective submitters' agreement to the rule amendment. The comments collectively support DoD's willingness to ensure equitable access be given to all educational institutions to provide academic and student support services to students, regardless of military student population size. The duplicative comment was identical to one of these ten.

Two comments addressed DoD policy beyond the scope of the rule. The first requested that DoD amend policy to ensure that educational institutions are granted one day a week on military installations to provide face-to-face counseling. The second requested that DoD change its policy to remove any fees currently being charged to schools for office space on military installations. These requests are beyond the scope of the proposed rule change. Therefore, DoD will not change the rule to incorporate them.

Executive Summary

Purpose of the Rule

The Office of the Under Secretary of Defense for Personnel and Readiness provides policy and oversight of DoD's Voluntary Education (VolEd) Program, including the Tuition Assistance (TA) program. The VolEd program is authorized in 10 U.S.C. 2006a and 2007, and DoD policy is in DoD Instruction 1322.25, "Voluntary Education Programs" (last updated on July 7, 2014 and available at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/132225p.pdf>). The requirements for educational institutions, that each institution must sign, are provided in the companion DoD VolEd Partnership Memorandum of Understanding (MOU) (available in DoD Instruction 1322.25, Appendix to Enclosure 3; further information available at <https://www.dodmou.com/>). For the purposes of this part, an educational institution is defined as "a college, university, or other institution of higher education."

In accordance with the current regulation and DoD MOU, educational institutions must have a domestic DoD installation student population of at least 20 military students to request permission for access to a DoD installation that is not overseas. The policy does not apply to

overseas DoD installations. Numerous institutions, using both private and public forums, have contacted the Office of the Deputy Assistant Secretary of Defense for Force Education and Training to communicate their concern over this policy inequity. The specific inequity is that currently all participating educational institutions do not have face-to-face counseling access. DoD determined that action was needed to rectify this policy inequity so that DoD policy is consistent and equitable, regardless of the type of educational institution or student population size.

Currently, 1,339 institutions of the approximately 2,700 DoD MOU educational institutions have between 1 and 19 students, meaning that they have no options for face-to-face counseling on military installations. Most institutions operating under this MOU manage their student counseling by virtual means. Removal of the 20-student requirement will ensure equity of student counseling options for all DoD MOU educational institutions. Adding a face-to-face option could change institutional processes to reflect travel or setting up local offices. However, any such process change would be entirely optional on the part of the educational institution.

Acknowledging that the size of the military installation may directly impact the number of students enrolled with a given educational institution, this change will also ensure that educational institutions have the opportunity to provide equal services to all Service members, including those assigned to smaller or more remote military installations.

Accordingly, this rule amends 32 CFR part 68 (last updated on May 15, 2014 at 79 FR 27737) to remove the 20 student requirement and allow educational institutions to provide academic services at DoD installations, regardless of the number of military students enrolled at that installation.

The number of additional schools availing themselves of on-base access as a result of the proposed change is predicted to be small, as more than 80 percent of Service members receiving TA attend the 25 largest DoD MOU schools, many of which are already afforded access to

military installations under the current rule. This policy change ensures that every DoD MOU educational institution is treated equally. Installation Commanders will still retain access authority for their installation based on capacity and their available resources.

Summary of Major Provisions

DoD determined that the requirement of having a student population of at least 20 military students before an educational institution can be authorized access on a DoD installation that is not overseas should be removed in order to provide consistent treatment of educational institutions, increased availability to students, convenience and fairness to Service members, and mission tempo of the servicing DoD installation and/or education office. Each educational institution must sign a DoD VolEd Partnership MOU. Eliminating the 20-student base access requirement will afford each of these educational institutions the same opportunity to provide academic counseling and student support services, regardless of the number of military students enrolled in their programs.

Additionally, this rule finalizes amendments to the Authority citations for the part to include 10 U.S.C. 2006a, as section 2006a became effective as law on August 1, 2014, after the May 2014 publication of the current version of this rule.

Legal Authority for this Program

The current rule implements the legal requirements of 10 U.S.C. 2005 and 2007 for DoD's VolEd Programs. The citation of 10 U.S.C. 2006a is also incorporated with this amendment. Below, we summarize each legal authority.

10 U.S.C. 2005 - Authorizes the Secretary concerned to associate a service agreement with the provision of advanced education assistance to a Service member and to subject a Service member to repayment if the service agreement is not satisfied.

10 U.S.C. 2006a – Establishes criteria restricting the types of educational programs that DoD educational assistance may be used for and authorizes the Secretary to waive these requirements in certain circumstances.

10 U.S.C. 2007 - Authorizes the Secretary of Defense to provide advanced education assistance and pay tuition for off-duty training or education of eligible members of the Armed Forces.

Regulatory History

The current rule was published in the Federal Register (FR) (79 FR 27732) on May 15, 2014, after a proposed rule was published in the FR (78 FR 49382) on August 14, 2013, for a 45-day public comment period. The rule implements DoD's VolEd Programs to provide Service members with opportunities to enhance their academic achievement (i.e., earn a degree or certificate) during their off-duty time, which in turn, improves job performance and promotion potential. The rule also addresses uniform TA, counseling, and support services policy. Funding for VolEd Programs, including the DoD TA program, is authorized by law (10 U.S.C. 2007) and is subject to the availability of funds from each Military Department.

The original rule for DoD's VolEd Program was published in the FR (77 FR 72941) on December 6, 2012, after a proposed rule was published in the FR (75 FR 47504) August 6, 2010, for a 45-day public comment period. Executive Order (EO) 13607, "Establishing Principles of Excellence for Educational Institutions Servicing Service Members, Veterans, Spouses, and Other Family Members", signed April 27, 2012 (available at <https://www.govinfo.gov/content/pkg/FR-2012-05-02/pdf/2012-10715.pdf>), directs the Departments of Defense, Veterans Affairs, and Education to establish Principles of Excellence to apply to educational institutions receiving funding from Federal military and veterans educational benefits programs, including benefits programs provided by the Post-9/11 GI Bill and the TA Program. A March 2011 Government Accountability Office report on the DoD TA program recommended DoD take steps to enhance its oversight of schools receiving TA funds.

(available at <http://www.gao.gov/new.items/d11300.pdf>). As a result, a DoD standardized MOU requirement was included in the rule. A MOU between DoD and an educational institution is required before participating in DoD VolEd Programs, including TA. The MOU outlines the Department's relationship with education providers to ensure that interactions with Service members are consistent with statute and applicable EOs. Additionally, the rule incorporates principles consistent with EO 13607.

Regulatory Analysis

We developed this rule amendment after considering numerous statutes and EOs related to rulemaking. Below, we summarize our analyses based on these statutes or EOs.

Regulatory Planning and Review

Executive Orders 12866 and 13563

EOs 12866 ("Regulatory Planning and Review") and 13563 ("Improving Regulation and Regulatory Review") direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). EO 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule amendment has been designated a "non-significant action," and, accordingly, has not been reviewed by the Office of Management and Budget (OMB).

Costs

Although the current rule had costs of \$100 million or more, this final rule amendment does not incur any additional cost, as this final rule is removing the minimum student requirement at domestic military bases of 20 military students and eliminating the possible disadvantage to military students for not receiving face-to-face academic counseling, certain educational courses, and other support services on the military installations. Neither action will increase or create a cost burden to the public.

Benefits

The rule benefits educational institutions with a population of fewer than 20 military students as it allows them to provide face-to-face academic counseling and administrative support to its students at a DoD installation, regardless of the number of its military students enrolled at that installation. This is a convenience to both educational institution and military students. Students will not have the added cost of having to leave their military installation, spending money for gas and travel to meet with their academic advisors. Additionally, there may be cost savings to the educational institutions, as the use of military facilities will preclude the need to secure and potentially pay for adequate facilities off the military installation.

Alternatives

We have identified two alternatives:

1. No action –The current rule would stand and only schools with 20 or more military students would be permitted to access the DoD installation to counsel their military students, thus sustaining an identified policy inequity. This action would not benefit the public because educational institutions would be denied access to meet with their military students if they have less than 20 students enrolled in their institutions. Military students will have the added cost of having to leave their installation, spend money for gas, and travel to meet with their academic advisors. Educational institutions will need to secure, and potentially pay for, adequate facilities off the military installation for counseling and administrative support.

2. Next best alternative –The next best alternative is to incorporate this rule amendment into the “full” revision of the rule to occur at a later date. The rule has been identified as a priority for modification to increase effectiveness and improve efficiencies. The “full” revision is currently in the development stage. However, it will be a significant amount of time (approximately 18 months) to complete internal processes that will culminate in development of the rule. This would put military students, as well as educational institutions, at a disadvantage

to not be able to meet for counseling and academic support on the military installation simply because the number of military students enrolled at the educational institution is not 20 or more.

Congressional Review Act, 5 U.S.C. 804(2)

Under the Congressional Review Act, a major rule may not take effect until at least 60 days after submission to Congress of a report regarding the rule. A major rule is one that would have an annual effect on the economy of \$100M or more or have certain other impacts.

This rule amendment is not a major rule under the Congressional Review Act.

Public Law 96-354, “Regulatory Flexibility Act” (RFA), (5 U.S.C. 601)

The RFA requires that each Federal agency analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. This rule is not an economically significant regulatory action, and it will not have a significant impact on a substantial number of small entities. Therefore, this rule is not subject to the requirements of the RFA.

Public Law 104-4, Sec. 202, “Unfunded Mandates Reform Act”

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100M in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$140M. This rule amendment will not mandate any requirements for State, local, or tribal governments or the private sector.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

This rule amendment does not contain a “collection of information” requirement, and will not impose additional information collection requirements on the public under Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. chapter 35).

Executive Order 13132, “Federalism”

This rule amendment has been examined for its impact under EO 13132, and it does not

contain policies that have federalism implications that would have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of powers and responsibilities among the various levels of Government. Therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 68

Adult education, Armed forces, Colleges and universities, Education, Educational study programs, Government contracts, Military personnel, Student aid.

For the reasons stated in the preamble, DoD amends 32 CFR part 68 as follows:

PART 68—VOLUNTARY EDUCATION PROGRAMS

1. The authority citation for part 68 is revised to read as follows:

AUTHORITY: 10 U.S.C. 2005, 2006a, 2007.

§ 68.6 [Amended]

2. Section 68.6 is amended by removing paragraph (d)(2) and redesignating paragraphs (d)(3) through (6) as paragraphs (d)(2) through (5), respectively.

Dated: May 19, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer,

Department of Defense.